

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**DES MOINES INDEPENDENT  
COMMUNITY SCHOOL DISTRICT**  
Des Moines, Iowa

ADMINISTRATIVE CONSENT  
ORDER

NO. 2012-AQ- 24

TO: Teree Caldwell-Johnson, Chair  
Board of Directors  
Des Moines Independent Community School District  
901 Walnut Street  
Des Moines, Iowa 50309

**I. SUMMARY**

This administrative consent order is entered into between the Des Moines Independent Community School District (Des Moines School District) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) violations for a renovation project at McCombs Middle School in Des Moines, Iowa.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Tom Wuehr, Environmental Specialist  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-7212

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II

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(air quality), and the rules promulgated and permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

Des Moines School District neither admits nor denies the Statement of Facts and enters into this Administrative Consent Order for settlement purposes only.

1. McCombs Middle School (school) is part of the Des Moines School District. The school is located at 201 SW County Line Road in Des Moines, Iowa. The school houses approximately 492 students and 60 staff. The school is currently undergoing a multimillion dollar renovation project. Larson and Larson Construction, LLC (Larson and Larson Construction) is the general contractor on the renovation project.

2. On October 4, 2011, Jack Millard, an employee of Larson and Larson Construction, removed several hundred square feet of asbestos containing ceiling tile from the library and adjacent hallways at the school. The following morning, the school's head custodian notified the school's principal of the asbestos disturbance. Des Moines School District made the decision to close the building until the asbestos could be cleaned up.

3. On October 6, 2012, Tom Wuehr, DNR environmental specialist, visited the school after becoming aware of the asbestos disturbance. Mr. Wuehr met with Jamie Wilkerson, school official responsible for asbestos compliance, and David Berger, Apex Companies; Apex Companies was the company in charge of the air sampling at the project. The group viewed the library area. Mr. Wuehr collected samples of dry ceiling tile debris from dumpsters in which the tiles removed by Mr. Millard had been placed. The laboratory results indicated 5% Chrysotile asbestos in two of the three samples.

4. Mr. Wuehr spoke to representatives of the Des Moines School District and Larson and Larson Construction. The two parties provided Mr. Wuehr with conflicting stories on the ceiling tile removal and the subsequent asbestos disturbance. The school officials stated that they informed Mr. Millard that he was disturbing asbestos containing material but that Mr. Millard continued removing the ceiling tile. The representative from Larson and Larson Construction stated that Mr. Millard was not informed until after the ceiling tile was on the floor that it contained asbestos.

5. The asbestos containing material was removed and the area was properly cleaned. The school was reopened on Monday, October 10, 2011.

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6. On December 27, 2011, DNR issued a Notice of Violation letter to the Des Moines School District for the asbestos violations discovered by Mr. Wuehr during the October 2011 investigation. The violations included failure to notify; failure to keep all regulated asbestos containing material adequately wet; failure to have a trained supervisor on site; and failure to seal the asbestos containing material in leak-tight containers. A similar Notice of Violation letter was issued to Larson and Larson Construction on December 27, 2011 for the same violations.

**IV. CONCLUSIONS OF LAW**

Des Moines School District neither admits nor denies the Conclusions of Law and enters into this Administrative Consent Order for settlement purposes only.

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission (Commission) to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. Proper and timely notification was not given prior to the renovation project. The above facts indicate a violation of this provision.

3. 40 CFR section 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. As the owner for the project, Des Moines School District is liable for the actions of its general contractor and any subcontractors. The facts in this case indicate that Des Moines School District was not in compliance with these provisions when the renovation project occurred.

4. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. As the owner for the project, Des Moines School District is liable for the actions of its general contractor and any subcontractors. Mr. Wuehr found dry asbestos containing material that had been removed but not collected or contained. The above facts indicate a violation of this provision.

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5. 40 CFR 61.145(c)(8) provides that effective one year after promulgation of this regulation, no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. As the owner for the project, Des Moines School District is liable for the actions of its general contractor and any subcontractors. The facts in this case indicate there was not a trained supervisor on site during the ceiling tile removal. The above facts indicate noncompliance with this provision.

6. 40 CFR 61.150(a)(1) states in order to properly dispose of the regulated asbestos containing material the material must be adequately wet, and placed in labeled leak-tight containers or wrapping. As the owner for the project, Des Moines School District is liable for the actions of its general contractor and any subcontractors. The ceiling tile was found dry in the dumpster and not sealed in a leak-tight wrap or container. The above facts indicate a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders and the Des Moines School District agrees to do the following:

1. Des Moines School District shall ensure that all school custodians and maintenance workers know where all the asbestos containing material is located in the buildings in which they work; and
2. Des Moines School District shall pay a penalty of \$5,000.00 within 30 days of the date from which the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent

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order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$5,000.00. The administrative penalty is determined as follows:

a. Economic Benefit. Once the asbestos disturbance was discovered by the Des Moines School District, the school took immediate steps to remove the debris and properly clean the school building. Any economic benefit received by the Des Moines School District was minimal and therefore, no economic benefit is being assessed.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to follow proper procedures to properly remove and dispose of the regulated asbestos containing material may create an environmental hazard to the workers and general public through the likely release of asbestos fibers. Failure to notify the DNR of the removal and renovation project prevented the DNR from being able to inspect the project to ensure compliance with the asbestos NESHAP regulations. For these reasons, \$2,500.00 is assessed for this factor.

c. Culpability. Des Moines School District has a duty to remain knowledgeable of the DNR's requirements, including requirements of the federal asbestos NESHAP regulations. Des Moines School District is responsible for the actions of its general contractor and subcontractors. For these reasons, \$2,500.00 is assessed for this factor.


## VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of the Des Moines School District. For that reason, the Des Moines School District waives the right to appeal this administrative consent order or any part thereof.

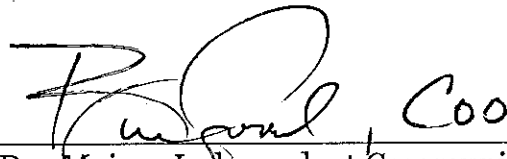
## VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 16<sup>th</sup> day of  
August, 2012

  
Des Moines Independent Community  
School District

Dated this 1<sup>st</sup> day of  
AUGUST, 2012

Kelli Book; Tom Wuehr; EPA; VII.C.4